

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company (SBC	:	
Illinois) and XO Illinois, Inc.	:	04-0557
	:	
Joint Petition for approval of Sixth	:	
Amendment to the Interconnection	:	
Agreement dated August 25, 2004 pursuant	:	
to 47 U.S.C. §252.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On September 3, 2004, pursuant to 83 Illinois Administrative Code Part 763, Illinois Bell Telephone Company ("SBC Illinois") and XO Illinois, Inc. ("XO"), filed a joint petition for approval of the Sixth Amendment to the Interconnection Agreement dated August 25, 2004, under Section 252 of the Telecommunications Act of 1996 (47 U.S.C. §§ 151 et seq.) ("the Act"). The Agreement was submitted with the petition. A statement in support of the petition was filed along with verifications sworn to by Eddie A. Reed on behalf of SBC Illinois and by Gegi Leeger on behalf of XO, stating that the facts contained in the petition are true and correct to the best of their knowledge, information, and belief.

Pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing by a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on October 14, 2004. Staff filed the Verified Statement of Qin Liu of the Commission's Telecommunications Division. At the hearing on October 14, SBC Illinois, XO, and Staff appeared and agreed that there were no unresolved issues in this proceeding. Ms. Liu's Verified Statement was admitted into evidence and the record was marked "Heard and Taken."

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection services or network elements, as well as amendments to those agreements. SBC Illinois and XO have negotiated such an Amendment to their Agreement and submitted it for approval in this proceeding.

Section 252(e)(1) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation...shall be submitted for approval to the State Commission." This Section further provides that a State Commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the State Commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the State Commission fails to act within 90 days after submission by the parties. This provision further states that "(n)o State court shall have jurisdiction to review the action of a State Commission in approving or rejecting an agreement under this section". Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State Commission fails to carry out its responsibility, and Section 252(e)(6) provides that any party aggrieved by a State Commission's determination on a negotiated agreement may bring an action in the appropriate Federal District Court.

Section 252(h) requires a State Commission to make a copy of each agreement approved under subsection (3) "available for public inspection and copying within 10 days after the agreement or statement is approved." Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

III. THE AGREEMENT

The Amendment to the underlying Agreement supercedes certain Intervening Law/Change of Law, Inter-carrier Compensation, Interconnection and Trunking provisions. The Amendment does not modify or extend the Effective Date or Term of the underlying Agreement, but is coterminous with it. Except as modified herein, all other terms and conditions of the underlying Agreement shall remain unchanged and in full force and effect.

IV. POSITIONS OF THE PARTIES

No party contended that the Amendment is discriminatory or contrary to the public interest. Staff reviewed the Agreement in the context of the criteria contained in Section 252(e)(2)(A) of the Act and determined that it met the necessary requirements. Under this Section, the Commission may reject an agreement, or any portion thereof, adopted by negotiation under Subsection (a) only if it finds that (i) the agreement, or a portion thereof, discriminates against as telecommunications carrier not a party to the agreement; or (ii) the implementation of such an agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity.

Ms. Liu stated that the Agreement meets the standards set forth in the Telecommunications Act of 1996 and is consistent with the public interest, convenience and necessity. Staff recommended that the Commission approve the Agreement for the reasons set forth in the Verified Statement of Ms. Liu. Staff also recommended that in order to ensure that the Amendment is in the public interest, SBC Illinois should implement the Amendment by filing, within five (5) days of approval by the Commission, a verified statement with the Chief Clerk of the Commission that the approved Amendment is the same as the Amendment filed in this docket with the verified petition.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) SBC Illinois and XO are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act;
- (2) SBC Illinois and XO have entered into an Amendment to the Interconnection Agreement dated as of August 25, 2004, which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the Amendment between SBC Illinois and XO does not discriminate against a telecommunications carrier not a party to the Amendment;
- (6) in order to assure that the Amendment is in the public interest, SBC Illinois should implement the Amendment by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Amendment is the same as the Amendment filed in this docket with the verified petition. The Chief Clerk shall place the Amendment on the Commission's website under Interconnection Agreements;
- (7) SBC Illinois should also place replacement sheets in its tariffs at the following location: Ill.C.C. No. 16 Section 18;
- (8) the Amendment should be approved as hereinafter set forth;

- (9) approval of the Amendment does not have any precedential effect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Sixth Amendment to the Interconnection Agreement dated August 25, 2004, between Illinois Bell Telephone Company (SBC Illinois) and XO Illinois, Inc. is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that SBC Illinois shall comply with findings (6) and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 10th day of November, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman